

JOHN M. KAHENY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
CASEY G. GWINN
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

John W. Witt

CIVIL DIVISION
202 "C" STREET
SAN DIEGO, CALIFORNIA 92101-3863
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: October 11, 1996
NAME: Lucy Goodman, Real Estate Assets
FROM: Leslie J. Girard, Assistant City Attorney
SUBJECT: Merger of Easements

QUESTION PRESENTED

If the City of San Diego owns a piece of property in fee simple, and records a map which dedicates various easements for public purposes, are those easements merged with the City's title so that they are extinguished and do not survive a transfer of the property to a private entity?

SHORT ANSWER

No, the easements are not merged and they survive the transfer. The grant deed transferring the property should refer to the recorded map in the legal description.

BACKGROUND

As you know, the City has conveyed to the San Dieguito Partnership that parcel of property known as the Corporate Research Park ("Park") as part of a litigation settlement. The Park was part of the Pueblo Lands of the City and thus has been in City ownership for many years. Pursuant to authorization received from the electorate, the City processed a parcel map in anticipation of selling or developing the Park. That map, No. 12745 (County Recorder file no. 90-623120), reserved several easements for certain public purposes. The grant deed provided by the City to the Partnership contains a legal description that specifically reserves those previously dedicated easements. A copy of the deed and legal description are enclosed as Attachment 1.

The Partnership has questioned the need to reserve through the deed the easements dedicated by the recorded Map, and has requested the City to revise the deed.¹ City staff is concerned that revising the deed to remove the express reservations of the dedicated easements will result in their extinguishment, as the City previously held title to the property (a result known as the “merger” doctrine). I have researched the issue and have determined that there has been no merger and that the dedicated easements will survive the transfer. The legal description in the deed should refer to the recorded map.

ANALYSIS

Our office has previously opined on the effect of the merger doctrine when the City acquires property on which an easement for public purposes has been dedicated. Our conclusion was that no merger occurred. A copy of our previous memorandum on the subject is enclosed as Attachment 2. The question posed herein, however, is slightly different in that the City is not acquiring a piece of property, rather the City owned the property, dedicated the easements and is now transferring title. The conclusion does not differ.

The merger doctrine is based upon the principle that a property owner cannot create or acquire easements in the owner’s favor (which are separate estates in property) over that same owner’s property. The estates (fee title and easement) are then said to have “merged” and the servient or lesser estate (the easement) is extinguished. The doctrine applies so long as the ownership interest in each estate (fee title and easement) is identical. If the interests are not, there is no merger of the estates. See generally 5 Miller & Starr, Current Law of California Real Estate, § 15:74 (2d ed. 1989).

In the case of a city, the interest as owner of the underlying fee and dedicatee of an easement for public purposes is different, thus there is no merger. City of Los Angeles v. Fiske, 117 Cal App. 2d 167, 172 (1953). The former interest is simply as owner of the fee. The latter, however, is as trustee for of the easements on the behalf of the public. Id. There being no true unity of interests in such a situation, there is no merger. In this case, the easements dedicated by the map are for various public purposes. Those dedications thus were not merged in the City's fee title at the time the map was recorded and the easements survive the transfer of the Park.

In addition, if the party in whom the estates are vested does not intend that a merger occur, a merger does not occur. 5 Miller & Starr at § 15:74, p. 585. In this case, the act of dedicating the easements in favor of the public, and the recordation of the map, at the time the

¹Although not expressly indicated, the Partnership apparently is making this request for financing reasons.

City had ownership of the fee title indicates an intent by the City that a merger not occur. Thus the easements have survived the transfer of title.

CONCLUSION

In light of this conclusion, please revise the legal description for the grant deed. The legal description need only contain the existing first paragraph, as it refers to the recorded map. I will also endeavor to obtain a written confirmation from the Partnership that the easements have survived. Thank you for your assistance in this matter. Please call me if you have any questions.

JOHN W. WITT, City Attorney

By

Leslie J. Girard
Assistant City Attorney

LJG:ljb:(x043.2)
Attachments 1 & 2
ML-96-50
C:\dmatop\temp\99.wpd